5332

SUPREME COURT OF THE UNITED STATES.

No. 185.

JOHN DOE EX DEM. CURTIS MANN AND DOLPHUS HANNAH, PL'FF IN ERROR,

vs.

WILLIAM WILSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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GIDEON, Print.

Pleas of the Circuit Court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at the city of Indianapolis, in said district, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, that being the time fixed by law for the holding of said court, before the Honorable Elisha M. Huntington, judge of said district.

JOHN DOE EX DEM. CURTIS MANN & DOLPHUS B. HANNAH
vs.
RICHARD B. ROE, with notice to William Wilson.
} Ejectment.

Be it remembered, heretofore, to wit, on the 22d day of August, in the year of our Lord, (1855) eighteen hundred and fifty-five, the following declaration was filed by the plaintiff's attorneys, Smith & Liston, in the above entitled case, to wit:

UNITED STATES OF AMERICA,
District of Indiana.

In the Circuit Court of the United States.

John Doe complains of Richard Doe in a plea of trespass and ejectment, for that, heretofore, on the first day of September, in the year of our Lord one thousand eight hundred and fifty-five, at and in the State of Indiana, in the district aforesaid, Curtis Mann, a citizen of the State of New York, and Dolphus B. Hannah, a citizen of the State of Iowa, had demised to the said John Doe the following lands and tenements, of the value of five thousand dollars, lying and being in the county of La Porte, in the State and district of Indiana, that is to say, section numbered nine, in township numbered thirty-five north, of range numbered four west, of the second principal meridian, and also section numbered ten, in township numbered thirty-five north, of range numbered four west, of the second principal meridian, agreeably to the congressional surveys by the United States: to have and to hold the same to the said John Doe, from said first day of September, A. D. 1855, for and during the term of twenty years thence next ensuing; by virtue of which said demise the said John Doe entered into the said lands and tenements, and was thereof possessed for the terms aforesaid, and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the second day of September, in the year 1855, at said State and district, with force and arms, entered into and upon the said lands and tenements, with the appurtenances, and ejected the said John Doe

therefrom, and other wrongs to the said John Doe then and there did, to his damage one thousand dollars; therefore he sues.

SMITH & LISTON,
Att'ys for Plaintiff.

On which declaration was entered the following notice, to wit:

To Stephen G. Wilson, Philander Loomis, John McLvey, Robert McLvey, and William Wilson.

I am informed that you are possessed of or claim title to the premises in this declaration mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no title to said premises, do advise you to appear at the next term of the circuit court of the United States for the district of Indiana, to be held on the third Monday in November next, and make yourselves defendants in my stead; otherwise judgment will be then and there entered against me by default, and you will be turned out of possession.

September 14th, 1855.

Your friend,
RICHARD ROE.

The marshal of the United States for the district of Indiana will serve this declaration and notice, by copy, on the said Stephen G. Wilson, Philander Loomis, John McLvey, Robert McLvey, and William Wilson, the tenants in possession of the lands and tenements described in the within declaration in ejectment, and return and file this declaration and notice in the clerk's office of said court forthwith, after the service of the same, with his return thereon endorsed.

SMITH & LISTON,
Att'ys for P'ff.

September 14, 1855.

Which declaration and notice was duly delivered to the marshal of said district, and by him returned with the following endorsement thereon, to wit:

As commanded, served this "declaration and notice" on the within named Stephen G. Wilson, by giving a copy to his wife personally, at the said Wilson's residence in La Porte county, Indiana, this the 19th day of September, 1855, and on the within named Philander Loomis, John McLvey, and Robert McLvey, by giving to each one personally a copy, this the 19th day of Sept., 1855, and on the within named William Wilson, by giving personally to his wife a copy, at the residence of said Wilson, in La Porte county, Indiana, this the 19th day of Sept., 1855; all of which service was done on the within described premises.

JOHN L. ROBINSON,
U. S. Marshal.
W. H. SMITH, *Deputy.*

And afterwards, to wit, at a circuit court begun, continued, and holden at the same place aforesaid, before the Honorable Elisha M. Huntington, judge of said district, on the 20th day of November, in the year of our Lord eighteen hundred and fifty-five, that being the 2d judicial day of the November term of said court, come now the plaintiffs by their attorneys, and on their motion the defendant is ruled to plead on the calling of this cause on Tuesday next. And day is given.

And afterwards, to wit, at a circuit court begun, continued, and holden at the same place and before the same judge as aforesaid, on the 29th day of November, in the year aforesaid, that being the 10th judicial day of the November term of said court, by the consent of the parties it is ordered by the court that William Wilson be made defendant herein, in the place of the said Richard Roe. And thereupon the said William Wilson comes and confesses lease, entry, and ouster, and admits himself in possession of the said premises in said declaration mentioned, to wit, sections number nine and ten, in township number thirty-five north, of range number four west. And the said William Wilson for plea says, that he is not guilty of the trespass and ejectment in said declaration alleged; and of this he puts himself on the country; and the said Mann and Hannah do the like. And day is given.

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis aforesaid, in the district aforesaid, before the Honorable John McLean, one of the associate justices of the Supreme Court of the United States, and judge of the circuit aforesaid, and the Honorable Elisha M. Huntington, judge of said district of Indiana, on the 29th day of May, in the year of our Lord one thousand eight hundred and fifty-six, that being the 10th judicial day of said term of said court, come the parties by counsel, and the defendants moves to suppress the deposition taken by the plaintiffs, under the act of Congress, for objections filed; and after argument, the court not being sufficiently advised, give the parties further day to hear their decision thereon.

And afterwards, to wit, at a circuit court begun, continued, and holden at the same place, and before the same judges as aforesaid, on the 30th day of May, that being the eleventh judicial day of said term of said court, the parties come, and the court being sufficiently advised, sustain the motion and suppress the depositions; and the plaintiffs ask and obtain leave to withdraw the same, and now take the same from the files of the court; and thereupon this action is continued at the cost of the plaintiffs of the term.

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis aforesaid, before the same judges as aforesaid, on the 19th day of May, in the year of our Lord one thousand eight hundred and fifty-seven, that being the 2d judicial day of said term, by the agreement of the parties the depositions in

this case are published without prejudice, and this cause is continued.

And afterwards, to wit, at a circuit court begun, continued, and holden at the same place as aforesaid, and before the Honorable Elisha M. Huntington, judge of said district, on the eighth day of December, that being the seventeenth judicial day of said term, in the year of our Lord one thousand eight hundred and fifty-seven, come now the parties, by their attorneys, and the defendants now move the court to continue this cause until the case can be heard and decided in chancery in the State courts, upon their affidavit now filed; and after hearing part of the argument, day is given.

And afterwards, to wit, at a circuit court begun, continued, and holden at the same place, and before the same judge as aforesaid, on the 9th day of December, that being the 18th judicial day of said term, come now the parties, by their attorneys; and after hearing the remainder of the argument of counsel, and day is given.

And afterwards, to wit, on the 10th day of December, that being the 19th judicial day of the November term of said court, before the same judge as aforesaid, come now the parties, by their attorneys, and the court now being sufficiently advised in the premises, overrule the motion heretofore made to continue; and thereupon a jury is called, and come, to wit: Samuel A. Edgar, Robert A. Taylor, Warren Tibbs, John Klingensmith, David W. Snyder, Joseph Ralston, Bennett Burns, Henry Bigler, Robert M. Cones, Charles Moore, George Lowe, and Daniel Moore, twelve good and lawful men of the district of Indiana, who being empannelled and sworn to well and truly try the issue joined, after hearing the evidence and a portion of the argument of counsel, separate by leave of court until to-morrow morning.

And afterwards, to wit, on the 11th day of December, in the year aforesaid, that being the 20th judicial day of said term, befor the same judge as aforesaid, come now the parties by their attorneys, and the jurors of the jury come also, and after hearing a further portion of the evidence, separate by leave of court until tomorrow morning, nine o'clock.

And afterwards, at a circuit court begun, continued, and holden at Indianapolis, in the said district of Indiana, before the Honorable Elisha M. Huntington, judge of said district of Indiana, on the 12th day of December, that being the 21st judicial day of the said November term of said court, the parties come, and the jury having heard the whole of the evidence, and the charge of the court, return into court the following verdict: "We, the jury, find the defendant 'not guilty;' " and thereupon the plaintiffs moved the court for a new trial on the following grounds, to wit:

First. The court refused legal instructions to the jury, asked by the plaintiffs, as set forth in the bill of exceptions.

Second. The court gave to the jury, on behalf of the defendant, illegal instructions, as stated in the bill of exceptions.

Third. The court admitted illegal evidence to go to the jury, on behalf of the defendant, as appears in the bill of exceptions.

And thereupon the court overrule the motion, and refuse to grant a new trial. It is therefore considered by the court that defendant as to said action go hence without day, and do recover against said plaintiffs his costs and charges in this behalf expended, taxed at dollars and cents. Whereupon the plaintiffs now move the court for a writ of error to the Supreme Court of the United States in this case; which motion the court sustain, and allow the said writ of error, upon the plaintiffs filing bond for costs according to law, in the penalty of five hundred dollars, within thirty days, with security to be approved by the clerk of this court, conditioned according to law. And thereupon the following citation and writ of error, with the service acknowledged therein, is made a part of the record:

United States of America to William Wilson.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December, A. D. 1858, in pursuance to a writ of error filed in the circuit court of the United States, for the seventh circuit and district of Indiana, wherein John Doe ex dem. Curtis Mann and Dolphus B. Hannah are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and reversed, and speedy justice should not be done to the parties in this behalf.

Witness Honorable Elisha M. Huntington, district judge of the United States for the district of Indiana, this 12th day of December, in the year 1857.

E. M. HUNTINGTON.

I, as attorney for the said William Wilson, the defendant in error, acknowledge the service of the above citation, 12th December, in the year 1857.

JNO. B. NILES, *for Self*,
And A. L. OSBORN,
Att'ys for Wilson.

The President of the United States of America to the honorable the Judges of the Circuit Court of the United States for the district of Indiana, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea in said circuit court, between John Doe, on the demise of Curtis Mann, and Dolphus B. Hannah, plaintiffs, and William Wilson, defendant, a manifest error hath happened,

to the great damage of the said plaintiffs, as by his said complaint appears, we being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, you, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the Chief Justice and associate justices of said Supreme Court, on the first Monday in December next, at the city of Washington, the present seat of the national government, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court, this 12th day of December, A. D. 1857. Issued at the clerk's office, in the city of Indianapolis, under the seal of the circuit court of the United States for the district of Indiana, the day and year last aforesaid.

[SEAL.]

H. BASSETT, *Clerk.*

During the trial of this cause before the court and jury the following bills of exceptions were signed and sealed, and made a part of the record, in the words and figures following, to wit:

1*st Bill of Exceptions.*

Circuit Court of the United States—November Term, 1857.

JOHN DOE EX DEM. MANN and HANNAH vs. WILLIAM WILSON. } Trespass and Eject.

Be it remembered, that on the trial of the above entitled cause before the court and jury, after the lessors of the plaintiffs had read to the jury the following articles of the treaty made and concluded upon the Tippecanoe river, in the State of Indiana, on the 27th day of October, in the year 1832, between Jonathan Jennings, John W. Davis, and Marks Crume, commissioners on the part of the United States, and the chiefs and warriors of the Pottawatomies, of the State of Indiana and Michigan Territory: "Article third. The United States agree to grant to each of the following persons the quantity of land annexed to their respective names, which land shall be conveyed to them by patent." "To Pet-chi-co, two sections." And had proved that Pet-chi-co, the reservee, had died before the location of the lands and the issuance of the patents, and had given in evidence, without any objection, the following patents to and deeds from the heirs of Pet-chi-co.

The United States of America to all to whom these presents shall come, greeting:

Whereas by the third article of the treaty made and concluded on the Tippecanoe river, in the State of Indiana, on the twenty-seventh day of October, one thousand eight hundred and thirty-two, between Jonathan Jennings, John W. Davis, and Marks Crume, commissioners on the part of the United States, and the chiefs and warriors of the Pottowatomies, of the State of Indiana and Michigan Territory, the United States agreed to grant, by patent, to Pet-chi-co two sections, to be selected under the direction of the President of the United States, after the lands were surveyed, and the boundaries to correspond with the public surveys: Now know ye, that the President of the United States having approved of the selection of section ten, in township thirty-five, of range four west, containing six hundred and forty acres, in the district of lands subject to sale, at La Porte, Indiana, as being one of the sections to which the said Pet-chi-co is entitled under the said treaty, there is therefore granted by the United States unto the said Pet-chi-co, and to his heirs, the tract of land above described: to have and to hold the said tract, with the appurtenances, unto the said Pet-chi-co, and to his heirs and assigns forever.

In testimony whereof I, Andrew Jackson, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city [SEAL.] of Washington, this seventh day of January, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the sixty-first.

By the President:

ANDREW JACKSON,
By A. JACKSON, JUN'R, *Sec'y.*

Recorded vol. 1, page 39, of Patents, under Pottowatomies' Treaties of 1832.

HOUSTON M. GARLAND,
Recorder of the General Land Office.

The United States of America to all to whom these presents shall come, greeting:

Whereas by the third article of the treaty, made and concluded on the Tippecanoe river, in the State of Indiana, on the twenty-seventh day of October, one thousand eight hundred and thirty-two, between Jonathan Jennings, John W. Davis and Marks Crume, commissioners on the part of the United States, and the chiefs and warriors of the Pottowatomies, of the State of Indiana

and Michigan Territory, the United States agreed to grant by patent to Pet-chi-co two sections, to be selected under the direction of the President of the United States after the lands were surveyed, and the boundaries to correspond with the public surveys: Now know ye, that the President of the United States having approved of the selection of section nine, in township thirty-five, of range four west, containing six hundred and forty acres, in the district of lands subject to sale at La Porte, Indiana, as being one of the sections to which the said Pet-chi-co is entitled under the said treaty, there is therefore granted by the United States unto the said Pet-chi-co and to his heirs the tract of land above described: to have and to hold the said tract, with the appurtenances, unto the said Pet-chi-co, and to his heirs and assigns forever.

In testimony whereof I, Andrew Jackson, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this seventh day of January, in the year of our Lord one thousand [SEAL.] eight hundred and thirty-seven, and the of independence of the United States the sixty-first.

By the President:

ANDREW JACKSON,
By A. JACKSON, JUN., *Sec'y.*

Recorded vol. 1, page 40, of Patents, under Pottawatomies' Treaties of 1832.

HOUSTON M. GARLAND,
Recorder of the General Land Office.

This deed, made and entered into this eighteenth day of September, A. D. 1854, between Nwa-kto, No-wa-yah-kozo, Esk-bug-num-qua, (who are the only heirs of Kagi-me-ga, deceased,) Zah-gah-kah-nuvah, who is the wife of said Nwa-kto, and Mko-nine, who is the husband of said Esk-bug-num-qua, and who are the children and heirs of said Kagi-me-ga, and are the grand-children and only surviving heirs of Pit-chi-ko, deceased, parties of the first part, residing in Kansas Territory, west of the State of Missouri, and David G. Rose, Johnathan Crews and Lycurgus Sherman, of La Porte county, in the State of Indiana, of the second part, witnesseth: that said Kwa-kto and Zah-gah-kah-nuvah, his wife, No-wa-yah-kozo, and Esk-bug num-qua and Mko-nine, her husband, in consideration of the sum of eight hundred dollars to them paid, have this day granted, bargained and sold, and do, by these presents, grant, bargain, sell and convey to said parties of the second part, and their heirs and assigns forever, the following real estate, together with all and singular the rights, privileges and appurtenances thereunto belonging, to wit, section ten, in township number thirty-five north, of range four west, situate,

lying and being in La Porte county, in the State of Indiana, and being one section of the same which was patented to said Pet-chi-ko under a treaty concluded with the Pottawatomie Indians, on the 27th day of October, 1832, and ratified on the 21st of January, 1833: To have and to hold the same to the parties of the second part, and their heirs and assigns forever; said parties of the first part hereby covenanting that they and their heirs, executors and admistrators, will forever warrant and defend the title to the premises aforesaid to said parties of the second part, or their assgns, against the lawful claim or claims of all persons whomsoever that may claim the same, or any part thereof.

Given under our hands and seals, this eighteenth day of September, A. D. 1854.

NWA-KTO, his ⋈ mark. [L. S.]

ZAH-GAH-KAH-MWAH, her ⋈ mark. [L. S.]

NO-WA-YAH-KOZO, his ⋈ mark. [L. S.]

ESK-BUG-NUM-QUA, her ⋈ mark. [L. S.]

MKO-NEM, his ⋈ mark. [L. S.]

Attest: A. COMINGE,
J. N. BOMASSA, *Inter.*
BENJ. H. BERTRAND.

STATE OF MISSOURI,
County of Jackson, ss.

Be it remembered, that on this eighteenth day of September, A. D. 1854, personally appeared before me, Oscar F. Scruggs, a justice of the peace within and for the county aforesaid, Nwa-kto, Zah-gah-kah-mwah, No-wa-yah-koze, Esk-bug-num-qua and Mko-nena, proven to me by the oaths of Joseph N. Bomassa and Benjamin H. Bertrand, two credible witnesses, to be the identical parties whom they represent themselves to be, and who executed the foregoing deed, and acknowledged that they executed said deed (the same having been fully explained to them in my presence, in their own language, by said Bomassa and Bertrand,) voluntarily, and for the uses and purposes therein contained.

Given under my hand, at the county of Jackson aforesaid, this day and year above written.

O. F. SCRUGGS,
Justice of the Peace.

STATE OF MISSOURI,
County of Jackson, ss.

I, John R. Swearingen, clerk of the county court within and for the county aforesaid, do hereby certify that O. F. Scruggs, esq., whose genuine signature appears to the foregoing acknowledgment of deed, now is and was at the time of so doing an acting justice of the peace, within and for the county aforesaid, duly elected, commissioned, and qualified, and that full faith and credit is due to all his official acts as such.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Independence, this 19th day of September, A. D. 1854.
[SEAL.]

JOHN R. SWEARINGIN, *Clerk.*
By B. F. WALLACE, *D. C.*

The recording of said deed in La Porte county, Indiana, is endorsed on the back thereof as follows, to wit: "Recorded Oct. 27th, 1854, in book A A, page 607. B. Spurlock, R. L. C."

This deed, made and entered into this eighteenth day of September, A. D. 1854, between Nwa-kto, No-way-yah-koze, Esk-bug-num-qua, (who are the only heirs of Koge-me-ga, deceased,) Zah-gah-kah-mwah, who is the wife of said Nwa-kto, and Mko-nene, who is the husband of said Esk-bug-num-qua, and who are the children and heirs of said Kage-me-ga, and are the grandchildren and only surviving heirs of Pit-chi-ko, deceased, parties of the first part, residing in Kansas Territory, west of the State of Missouri, and Dolphus B. Hannah, of the State of Iowa, and Jonathan Crews, of La Porte county, in the State of Indiana, of the second part, witnesseth: that said Nwa-kto and Zah-gah-kah-mwah, his wife, No-wa-yah-koze, and Esk-bug-num-qua, and Mko-nene her husband, in consideration of the sum of eight hundred dollars to them paid, have this day granted, bargained, and sold, and do, by these presents, grant, bargain, sell, and convey to said parties of the second part, and their heirs and assigns forever, the following real estate, together with all and singular the rights and privileges and appurtenances thereunto belonging, to wit, section nine, in township number thirty-five north, of range four west, situate, lying, and being in La Porte county, in the State of Indiana, and being one section of the land which was patented to said Pit-chi-ko under a treaty concluded with the Pottawatomie Indians, on the 27th day of October, 1832, and ratified on the 21st day of January, 1833: To have and to hold the same to the parties of the second part, and their heirs and assigns forever; said parties of the first part hereby covenanting that they and their heirs, executors and administrators, will forever warrant and defend the title to the premises aforesaid to said parties of the second part, or their heirs or assigns forever, against the lawful claim or

claims of all persons whomsoever that may claim the same, or any part thereof.

Given under our hands and seals, this eighteenth day of September, A. D. 1854.

NWA-KTO, his ✕ mark. [SEAL.]

ZAH-GAH-KAH-MWAH, her ✕ mark. [SEAL.]

NO-WA-YAH-KOZE, his ✕ mark. [SEAL.]

ESK-BUG-NUM-QUA, her ✕ mark. [SEAL.]

MKO-NENE, his ✕ mark. [SEAL.]

Attest: A. COMINGO,
J. N. BOMASSA, *Interp.*
BENJ. H. BERTRAND.

STATE OF MISSOURI,
Jackson County, ss.

Be it remembered, that on this eighteenth day of September, A. D. 1854. personally appeared before me, Oscar F. Scruggs, a justice of the peace within and for the county aforesaid, Nwa-kto, Zah-gah-kah-mwah, No-wa-yah-koze, Esk-bug-num-qua, and Mko-nene, proven to me, by the oaths of Joseph N. Bomassa and Benj. H. Bertrand, two credible witnesses, to be the identical parties whom they represent themselves to be, and who executed the foregoing deed, and acknowledged that they executed said deed (after the same had been explained to them in my presence, in their own language, by said Bomassa and Bertrand) voluntarily, and for the uses and purposes therein contained.

Given under my hand, at the county of Jackson aforesaid, this day and year above written.

O. F. SCRUGGS,
Justice of the Peace.

STATE OF MISSOURI,
County of Jackson, ss.

I, John R. Swearingen, clerk of the county court within and for the county aforesaid, do hereby certify that O. F. Scruggs, esq., whose genuine signature appears to the foregoing acknowledgment of deed, now is, and was at the time of so doing, an acting justice of the peace within and for the county aforesaid, duly elected,

commissioned, and qualified, and that full faith and credit is due to all his official acts as such.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Independence, [SEAL.] this 19th day of September, A. D. 1854.

JOHN R. SWEARINGEN, *Clerk.*
By B. F. WALLACE, *D. C.*

The recording of said deed in La Porte county, Indiana, is endorsed on the back thereof as follows, to wit: "Recorded Oct. 27th, 1854, in Book A A., p. 606. B. Spurlock, R. L. C."

Whereas, at a treaty made and concluded on the Tippecanoe river, in the State of Indiana, on the twenty-seventh day of October, in the year of our Lord eighteen hundred and thirty-two, between Jonathan Jennings, John W. Davis, and Murks Crume, commissioners on the part of the United States, and the chiefs and warriors of the Pottawatomies (Indians) of the State of Indiana and Michigan Territory; and whereas, also, by the provisions of the third article of said treaty the United States agree to grant to each person (a schedule of whose names are set forth in said article,) the quanty of land annexed to their names, which lands shall be conveyed to them by patent, to Pet-chi-co (an Indian of that name mentioned in said schedule,) two sections is annexed to his name, and reserved to him by the provisions of said treaty. The said article of said treaty also provides, that the reservations shall be selected under the direction of the President of the United States, after the lands shall have been surveyed, and the boundaries to correspond with the public surveys. And whereas, also, the *the* President of the United States having approved of the selection of sections nine (9) and ten (10,) in township thirty-five (35) north, of range four west, of the second principal meridian, in the State of Indiana, containing six hundred and forty acres each, and containing in the whole twelve hundred and eighty acres of land, to which the said Pet-chi-co is entitled under the provisions of said treaty. And whereas, also, on the seventh day of January, in the year of our Lord one thousand eight hundred and thirty-seven, a patent of the United States of America, under the seal of the General Land Office, duly issued under the authority of the President of the United States, whereby the United States granted unto the said Pet-chi-co and to his heirs the said two sections of land above described, to have and to hold the said tracts of land, with the appurtenances, unto the said Pet-chi-co, and to the heirs and assigns forever of said Pet-chi-co. And whereas the said Pet-chi-co deceased before the said lands were surveyed, and before the said reservation was selected or approved by the President of the United States, and before the said patent issued granting the same as aforesaid. And whereas the only surviving heirs of the said Pet-

chi-co now living, and the only persons entitled to the possession of the said lands, being the owners thereof in fee simple, are now residing in the Territory of Kansas, west of the State of Missouri, to wit, Nwa-kto, No-wa-yah-kose, and Esk-bug-num-qua, the grand-children of the said Pet-chi-co, deceased:

Now this indenture witnesseth, that we, the said Nwa-kto and Zah-gah-kah-mwah, his wife, and No-wa-yah-koze, Esk-bug-num-qua, and Mko-nene, her husband, who all join in this conveyance, to convey their joint and several interests in the said two sections of land, as parties of the first part, residing in the said Territory of Kansas, west of the State of Missouri, to Jonathan Crews and Lycurgus Sherman, of the county of La Porte, Indiana, and Dolphus B. Hannah, of the State of Iowa, party of the second part, witnesseth: that the said party of the first part, for and in consideration of the sum of sixteen hundred dollars (the receipt whereof is hereby acknowledged) to them paid by the said party of the second part, hereby bargain, sell, convey and warrant all their right, title, and interest whatever in fee simple of the said party of the first part, to the said party of the second part, their heirs and assigns forever, the said two sections of land hereinbefore described, situate, lying and being in the said county of La Porte and State of Indiana, aforesaid, to have and to hold the said real estate, and every part and parcel thereof, to the said party of the second part, their heirs and assigns, free from all incumbrances whatever, in fee simple, forever.

In witness whereof the said Nwak-to and Zah-gah-kah-mwah, his wife, and No-wa-yah-kose, (who has no wife,) Esk-bug-num-qua, and Mko-mene, her husband, have hereunto set their hands and seals, this twenty-fourth day of March, one thousand eight hundred and fifty-five.

NWAK-TO, his ⋈ mark. [SEAL.]

NO-WA-YAH-KOZE, his ⋈ mark. [SEAL.]

ESK-BUG-NUM-QUA, his ⋈ mark. [SEAL.]

MKO-MENE, his ⋈ mark. [SEAL.]

ZAH-GAH-KAH-MWAH his ⋈ mark. [SEAL.]

Signed, sealed, acknowledged, and delivered in presence of and by us interpreters, under oath.

J. N. BOMASSA,

her

MARY NADEAU, ⋈

mark.

MARY E. NADEAU.

STATE OF MISSOURI,

Jackson County, ss.

On this twenty-fourth day of the month of March, in the year of our Lord one thousand eight hundred and fifty-five, before me, the undersigned Elijah M. McGee, a justice of the peace in and for the town of West Port, county and State aforesaid, at my office therein, Nwak-to, a male Indian, and Zah-gah-kah-mwah, an Indian woman, his wife, also "No-wa-yah-koze," a male Indian, (who has no wife,) also Esk-bug-num-qua, an Indian woman, and Mko-mene, a male Indian, her husband, the within named grantors, and personally known to me as the identical persons whose signatures are attached to the within deed, and who executed and delivered the same in my presence, and in the presence of the three persons whose signatures are attached thereto as attesting witnesses to the same, and the said grantors then and there severally acknowledged before me that they understood the full purport, object, meaning, and contents of the said deed, for the uses and purposes therein expressed. The said three witnesses, before placing their signatures as the attesting witnesses to the within deed, and before the execution of the same by the grantors, were then and there all three severally duly sworn before me to interpret and explain in the Pottawatomie language to the understanding of the said grantors the full purport and contents, meaning and object of the within deed to the said grantors, and to interpret to me in the English language what the grantors should say and acknowledge respecting the same; and the said three witnesses, to wit, Joseph N. Bomassa, Mary Nadeau, and Mary E. Nadeau, after being thus duly sworn as aforesaid, and having interpreted the full purport and contents, object and meaning of the said deed, and explained the same in the Pottawatomie language to said grantors; the said grantors then and there directed the said witnesses to explain and interpret to me in the English language that they were Pottawatomies, and that they understood the Pottawatomie language, and that they understood the full purport, meaning, object and contents of said deed, and that they had sold the said land to the grantees, as expressed in said deed, and were fully satisfied with the same; and that they were the only surviving legal heirs of the said Pet-chi-co, who was their grandfather, and the identical reserve, as described in said recitals of said deed; and that the said Pet-chi-co deceased some time in the year eighteen

hundred and thirty-three. I also certify that these witnesses are all educated in the English language, and they state under oath that neither of them has more than half Indian or any other than white blood in his veins, and which I believe to be the truth; and said witnesses also testify under oath that they know the grantors to be the persons they represent themselves to be, and that the grantors are all over twenty-one years of age.

Given under my hand and seal, at my office aforesaid, the day and year above written.

ELIJAH M. McGEE, [SEAL.]
Justice of the Peace.

STATE OF MISSOURI,
County of Jackson, ss.

I, John R. Swearingen, clerk of the county court within and for the county aforesaid, do hereby certify that Elijah M. McGee, whose genuine signature is appended to the foregoing certificate of acknowledgment, now is and was at the time of taking said acknowledgment an acting justice of the peace within and for the county aforesaid, duly elected, commissioned, and qualified, and that full faith and credit is due and ought to be given to all his official acts as such, as well in courts of justice as thereout.

I further certify that the county court aforesaid is a court of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of Independence, this 30th day of March, A. D. 1855. [SEAL.]

JOHN R. SWEARINGEN, *Clerk.*

On the back of which deed was endorsed the following: Deed—Heirs of Pet-chi-co to Crew, Sherman and Hannah. "Recorded in the Record of Deeds for La Porte county, Indiana, in Book B B, pages 367, 368, and 369, on the 7th day of April, 1855. Fee $. B. Spurlock, R. L. C."

We, Jonathan Crews and Mary M. Crews, his wife, of the county of La Porte, State of Indiana, quit-claim to Curtis Mann, of the city of Buffalo, State of New York, the following described real estate, in the county of La Porte, State of Indiana, to wit, the undivided one-half of one-third of sections nine (9) and ten (10,) in township thirty-five, range four west, for and in consideration of eight hundred dollars.

Witness our hands and seals, this fifth day of May, A. D., 1855.

JONATHAN CREWS, [SEAL.]
MARY M. CREWS. [SEAL.]

STATE OF INDIANA,
La Porte County, ss.

Before me, Samuel E. Williams, a notary public, this fifth day of

May, A. D. 1855, Jonathan Crews and Mary M. Crews, his wife, acknowledged the execution of the above deed.

In testimony whereof I have hereunto set my hand and notarial seal, the day and year last above written.

[SEAL.]

SAM'L E. WILLIAMS,
Notary Public.

The recording of said deed in La Porte county, Indiana, is endorsed on the back thereof as follows, to wit:

"Recorded in the record of deeds for La Porte county, Indiana, in book No. 1, page 1, on the 10th day of August, 1855. B. Spurlock, R. L. C."

We, Lycurgus Sherman and Maria M. A. Sherman, his wife, of the county of La Porte, State of Indiana, quit-claim to Curtis Mann, of the city of Buffalo, State of New York, the following described real estate in the county of La Porte, State of Indiana, to wit, the undivided one-third of sections nine (9) and ten (10,) in township thirty-five (35) north, of range four (4) west, for and in consideration of the sum of twelve thousand eight hundred dollars.

In witness whereof we have hereunto set our hands and seals, this eighth day of August, A. D. 1855.

LYCURGUS SHERMAN, [SEAL.]
MARIA M. A. SHERMAN. [SEAL.]

Signed, sealed, and delivered in presence of—
L. MANN, JR.

STATE OF INDIANA,
La Porte County, ss.

Before me, Samuel E. Williams, a notary public, this 8th day of August, A. D. 1855, Lycurgus Sherman and Maria M. A. Sherman, his wife, severally acknowledged the execution of the above deed.

In testimony whereof I have hereto set my hand and affixed my notarial seal, the day and year above written.

[SEAL.]

SAM'L E. WILLIAMS,
Notary Public.

The recording of this deed in La Porte county, Indiana, is endorsed on the back thereof thus, to wit:

"Recorded in the record of deeds for La Porte county, Indiana, in book No. 1, page 1, on the 10th day of *day of* August, 1855. B. Spurlock, recorder."

We, Jonathan Crews and Mary M. Crews, his wife, of the county of La Porte, State of Indiana, quit-claim to Dolphus B. Hannah, of the State of Iowa, the following real estate in the county of La Porte, State of Indiana, to wit, the undivided one-sixth of sections nine (9) and ten (10,) in township thirty-five, (35,) range four (4) west, for and in consideration of the sum of six thousand four hundred dollars.

In testimony whereof we have hereto set our hands and seals, this thirtieth day of August, A. D. 1855.

JONATHAN CREWS, [SEAL.]
MARY M. CREWS. [SEAL.]

STATE OF INDIANA,
La Porte County, ss.

Before me, Samuel E. Williams, a notary public, this thirtieth day of August, A. D. 1855, Jonathan Crews and Mary M. Crews severally acknowledged the execution of the above deed.

In testimony whereof I have hereunto set my name and affixed my notarial seal, the day and year above written.

[SEAL.]

SAM'L E. WILLIAMS,
Notary Public.

The recording of the above deed in La Porte county, Indiana, is endorsed on the back thereof as follows, to wit:

"Recorded in the record of deeds for La Porte county, Indiana, in book No. 1, page 45, on the 30th of August, 1855. B. Spurlock, R. L. C."

David G. Rose, of La Porte county and State of Indiana, hereby quit-claims to Dolphus B. Hannah, of the county of Muscatine, and State of Iowa, the following real estate in the county of La Porte, and State of Indiana, to wit, one undivided one-third part of section ten, (10,) township thirty-five (35) north, of range four (4) west, for the consideration of eight hundred dollars, which is paid.

Witness his hand and seal this day of A , A. D. 18 .

D. G. ROSE, [SEAL.]

STATE OF INDIANA,
Marion .

Before me, Lormey R. Brownell, a notary public within and for said county, this 24th day of February, A. D. 1855, David G. Rose, and acknowledges the execution of the foregoing deed.

Witness my hand and notarial seal the day and year above.

[NOTARIAL SEAL.]

LORMEY R. BROWNELL,
Notary Public.

Recorded Sept. 3d, 1855, at 10 a. m.

STATE OF INDIANA,
La Porte County.

I hereby certify the foregoing is a correct copy of a deed on record in this office, in book No. 1, page 68, record of deeds.

Witness my hand and official seal, this 17th day of May, A. D. 1856.

[SEAL.]

ANDERSON HUPP,
Recorder L. C.

The plaintiff having rested before the jury, the defendant then offered the following deed from Pet-chi-co to Alexes Coquillard and David H. Colerick in evidence; which deed is in the words and figures following, to wit:

This indenture, made the eighth day of February, in the year of our Lord eighteen hundred and thirty-three, between Pit-chi-ko, one of the head chiefs of the Pottawatomie of Indians, of the one part, and Alexis Coquillard and David H. Colerick, of the State of Indiana, of the other part, witnesseth: That the said Pit-chi-co, for and in consideration of the sum of sixteen hundred dollars to him in hand well and truly paid by the said Alexis Coquillard and David H. Colerick, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, and confirm unto the said Alexis Coquillard and David H. Colerick, and their heirs and assigns forever, all of those two sections of land lying and being in the State aforesaid, in the region of country or territory ceded by said nation of Indians to the United States at the treaty made and concluded on the Tippecanoe river in the latter end of the month of October, in the year of our Lord aforesaid, by and between Jennings, Crume, and Davis, esquires, commissioners on the part of the United States, and the chiefs, headmen, and warriors of the Pottawatomie nation of Indians; in which said treaty it was one of the stipulations and provisions of the said treaty that the said Pit-chi-ko should have reserved to himself in fee two sections of land, to be located in the territory ceded by said treaty, under the directions of the President of the United States, which said two sections of land is estimated to contain twelve hundred and eighty acres of land, be (the) same more or less, and all the estate, right, title, interest, claim, and demand of the said Pit-chi-ko of, in, and the provisions of the said treaty, and the said premises hereby assigned, bargained, and sold, together with all the rights and privileges to the same belonging: To have and to hold the premises aforesaid hereby assigned, bargained, and sold, or intended so to be, to the only proper use, benefit, and behoof of the said Alexis Coquillard and D. H. Colerick, and their heirs and assigns forever; and the said Pit-chi-ko, for himself, and his heirs and representatives, doth covenant, grant, and agree to and with the said Alexis Coquillard and David H. Colerick, and their heirs and representatives and assigns, that he is the true and lawful owner of the premises hereby granted, and hath good right and lawful authority to assign, sell, and convey the same in manner and form aforesaid. And further, that he, the said Pit-chi-ko, and his heirs and representatives, will warrant and forever defend the aforesaid premises unto the said Alexis Coquillard and David H. Colerick, and their heirs and assigns, against all and every person or persons whomsoever.

In witness whereof the said Pit-chi-ko, one of the principal chief of said nation, has hereunto set his hand and seal, on this the day and year first before written.

PIT-CHI-KO. his ⋈ mark. [SEAL.]

Signed, sealed, and deliv'd in presence of us—
FRANÇIS COMPARET,
L. F. ARNOLD.

STATE OF INDIANA,
St. Joseph County, ss.

Personally appeared before me, the subscribed and acting justice of the peace in and for the said county, one Francis Comport, who speaks and understands the Pottawatomie language, who is a man of good moral character and lawful age, who after having been duly sworn to make a true interpretation of the aforegoing deed to the said Pet-chi-co, in the presence of other chiefs of said nation. Then came Pet-chi-co, the above grantor, and being examined agreeably to the act in such case made and provided, acknowledged the above indenture to be his voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and seal, on this day of A. D. 183'.

F. COMPARET. [SEAL.]

STATE OF INDIANA,
St. Joseph County, ss.

Personally appeared before me, L. F. Arnold, a justice within and for said county, Pet-chi-co, the above grantor, who being by me duly examined, agreeable to the act in such case made and provided, acknowledged the signing and sealing of the above indenture to be his voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and seal, at South Bend, this eighth day of February, 1833.

L. F. ARNOLD, [SEAL.]
Justice of the Peace.

We, the head chiefs and warriors of the Pottawatomie nation of Indians, do hereby certify that our friend Pet-chi-ko sold his two sections of land to Coquillard and Colerick, of his own free will and desire, for the consideratiou named in the deed.

Witness:

TO-PE-NE-BA, *Principal Chief.* his ⋈ mark.

PO-CHA-GWA, *2d Principal Chief.* his ⋈ mark.

STATE OF INDIANA,
St. Joseph County, ss.

I, Samuel M. Chord, clerk of the St. Joseph circuit court, do hereby certify, that Levi F. Arnold, esq., before whom the execution of the annexed deed was acknowledged, was at the date of said acknowledgment an acting justice of the peace within and for said county, duly commissioned and qualified, and legally authorized to take acknowledgments; and I further certify that I am acquainted with the handwriting of said Arnold, and verily believe the signature thereto attached purporting to be his is genuine.

Witness Samuel M. Chord, clerk of said court, and the seal of said court hereunto affixed, at South Bend, this 27th day of February, 1856.

[SEAL.]

SAM'L M. CHORD, *Clerk.*

The above deed being recorded on the 27th February, 1856, in La Porte county, Indiana. The execution of the above deed being admitted.

To the introduction of which the plaintiffs objected at the time, before the same was read, upon the following grounds:

1st. Pet-chi-co, the reservee, had no assignable interest in the reservation as he died before the location of the land or the issuance of the patents.

Second. The purchase from Pet-chi-co of his interest in the reservation before the land was located, and the said patents issued, was void in law, against the acts of Congress and public policy.

Third. The paper is void, as containing no sufficient description in law to convey and vest a legal title.

Fourth. At most, the paper could only convey an equity, and cannot be given in evidence in this action at law.

But the court overruled the objections, and each of them, and permitted the defendant to read said paper to the jury as a deed; to which opinion of the court the plaintiffs objected and excepted at the time.

The defendant then introduced the following deeds from Colerick and Coquillard:

Know all men by these presents, that I, David H. Colerick, of the county of Allen and State of Indiana, do hereby assign to Alexis Coquillard all my undivided interest of, in, and to the two sections of land reserved to Pet-chi-co, an Indian chief of the Pottawatomie nation of Indians, in the treaty of Tippecanoe, A. D. 1832; and I, the said David H. Colerick, do hereby assign, release, and quit-claim all my right, title, claim, interest and demand of, in, and to the said two sections of land to the said Alexis Coquillard, his heirs and assigns forever, for value received.

Witness my hand and seal, on this the 24th June, A. D. 1834.

D. H. COLERICK. [SEAL.]

Signed, sealed and delv'd in presence of us.
JOHN CH. ITENS.
H. R. COLERICK.

Know all men by these presents, that I, Alexis Coquillard, of the county of St. Joseph and State of Indiana, do hereby assign to William Wilson all my right, title, and interest of, in, and to the two within mentioned sections of land reserved to Pit-chi-ko, an Indian chief of the Pottawatomie nation of Indians, in the treaty of Tippecanoe, A. D. 1832; and I, the said Alexis Coquillard, do hereby assign, alien, and quit-claim all my right, title, claim, interest, and demand of, in, and to the said two sections of land, to the said William Wilson, his heirs and assigns forever, for value received.

Witness my hand and seal, on this 27th June, 1835.
ALEXIS COQUILLARD. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES ALLGER.

To the reading of which severally to the jury, their execution being admitted, the plaintiff objected before they were read, on the same grounds of the objection urged against the deed from Pet-chi-co, but the court overruled the objection, and permitted the deeds to be read to the jury; to which opinion of the court the plaintiff objected and excepted at the time, and prays that this his bill of exceptions may be signed and sealed by the court, which is now done and made a part of the record, while the trial is pending before the jury.

E. M. HUNTINGTON. [SEAL.]

2d Bill of Exceptions.

And afterwards, to wit, on the 21st judicial day of the same November term of said court aforesaid, the parties, by their counsel, come, and the jury come also; and be it remembered, that on the trial of the above cause before the court and jury, after the whole evidence had been given, and before the jury retired from the court, the plaintiff asked the court to give to the jury the following several instructions, to wit:

Instructions asked by the Plaintiff and refused by the Court.

First. That until the date of the patents, 7th January, 1837, the title to these lands was in the United States, and no time nor adverse possession can be set up by the defendant commencing before that time.

Second. No adverse possession can be set up for less time than twenty years, as a bar to this action; and as twenty years have not elapsed between the date of the patents and the bringing of this action, there can be no adverse possession in this case.

Third. That Pet-chi-co held no interest under the treaty in the lands in question up to the time of his death that was assignable, he having died before the location of the land and before the patents issued.

Fourth. That the contract between Pet-chi-co and Coquillard and Colerick for his interest in the lands, made before the land was located or the patents issued, was unauthorized and void, against public policy, and the laws of the United States.

Fifth. The defendant, William Wilson, claiming under the contract between Pet-chi-co and Coquillard and Colerick, that contract not being valid, or assignable, cannot be considered by the jury an assignee, in the contemplation of the act of Congress or the patents, and cannot take under the patents.

Sixth. That neither the promise to the Indian nation by the government to patent these lands to Pet-chi-co, nor the paper executed by Pet-chi-co, being made assignable by law, the same, even if valid in other particulars, is void at common law, for the want of a sufficient description of the land, and is also void in this action under the statute of frauds and perjuries.

Seventh. That the defendant, prior to the issuance of the patent, was a trespasser on the lands of the United States in question, and having acquired neither an equitable nor legal title since, he has been and still is a trespasser as against the legal owners, the plaintiffs, claiming under the patents.

Eighth. It being proved that Pet-chi-co, the Indian to whom the promised grant was made of two sections of land by the third article of the treaty held with the Pottawatomie Indians, in Indiana, on Tippecanoe river, of the 27th day of October, A. D. 1832, deceased some time in the year A. D. 1833, and which is admitted by all parties in the suit, the pl'ffs ask the court to instruct the jury that no patent for said land could have issued to any person for said land under said treaty, unless in virtue of the provisions of the act of Congress of the 20th May, 1836, entitled "An act to give effect to patents for public land issued in the names of deceased persons," and that when said patents issued for said land, it enured to and vested the legal title in fee simple in the heirs of said Pet-chi-co, and not in any person or persons claiming as assignees as against the heirs.

Ninth. That there were three treaties of the Tippecanoe river held with Pottawatomie Indians, in Indiana, in the month of October, A. D. 1832—the first on the 20th, the second on the 26th, and the third on the 27th day of that month and year; and that by the treaty of the 27th, of that date, the promised grant was made to Pet-chi-co, and that if Pet-chi-co had the right of assigning or transferring his interest to said promised grant in said treaty, and did assign his interest therein, as contended for by the defendant, by his deed of the 8th day of February, 1833, to Co-

quillard and Colerick, before the location of the land under the direction of the President, that such assignees can claim no interest in said assignment, unless the lands were afterwards located in the territory ceded by the Indians of the date of the 27th day of October aforesaid; and as the lands in controversy are not situated within the territory ceded by the said treaty of the 27th, but are situate within the territory ceded by a different band of the same tribe by the said treaty of the 26th of October aforesaid, and therefore the defendant cannot claim nor hold the land as the assignee of Pet-chi-co, nor as his assignee, under the provisions of the act of Congress of the 20th May, 1836, entitled An act to give effect to patents for public lands issued in the names of deceased persons.

Which instructions the court refused to give, and each of which instructions the court refused to give, on the ground that they and each of them were unwarranted by the laws of the land; to which opinion of the court, as to each of the instructions asked, the plaintiffs objected and excepted at the time, while the jury were in the box, and before they had retired from the court, in due time. And thereupon the defendant asked the court to give the following instructions, to wit:

Instructions asked for by the Defendant and given by the Court.

1. The descriptions of the land in the deeds from Pet-chi-co to Coquillard and Colerick, from Colerick to Coquillard, and from Coquillard to Wilson, are sufficient to identify the land thereby intended to be conveyed as the same two sections of land which are in controversy in this suit, and which are described in the patents which have been read in evidence.

2. Had the patents for the two sections of land now in controversy been issued to the Indian, Pet-chi-co, in pursuance of the treaty by which the United States agreed to grant to him those two sections, and the legal title been thereby fully vested in him at the date of his deed to Coquillard and Colerick, which has been given in evidence, then that deed would have been sufficient on its face to convey to them the legal title to the land immediately on its execution and delivery.

3. The heirs of Pit-chi-co, through whom the lessors of the plaintiff claim title, and the lessors of the plaintiff themselves, as vendees of said heirs, are estopped by the covenants in Pit-chi-co's deed to Coquillard and Colerick from denying that Pit-chi-co had the legal title to the land in controversy at the date of that conveyance.

4. If Pit-chi-co, between the ratification of the treaty and the issuing of the patents, sold and conveyed the land in controversy by a sufficient deed of conveyance, with covenants of warranty, to Coquillard and Colerick, and their assigns, then the patents when issued, as to the assignees, related back to and took effect from the ratification of the treaty.

5. If before the issuing of the patents to Pit-chi-co he had by a legal and valid instrument assigned to Coquillard and Colerick his interest in the lands which were to be granted to him under the treaty of October, 1832, and if Colerick had in like manner assigned his interest to Coquillard, and if Coquillard had in like manner assigned to Wilson, then, by virtue of the act of Congress of May 20, 1836, the patents when issued inured to the benefit of Wilson, and vested the legal title to the land in him, although Pit-chi-co may have died before its date.

6. The mere fact that Pit-chi-co was an Indian does not of itself, in the least degree, invalidate the conveyance which was executed by him to Coquillard and Colerick.

7. If the jury believe from the evidence that the defendant was in the notorious undisputed possession of the land in controversy, holding it under the deed from Coquillard, and claiming it as his own at the time when the conveyances under which the lessors of the plaintiff claim title were executed, then the latter conveyances are void as against Wilson, and the jury must find for the defendant.

8. If Wilson, the defendant, held a deed from Alexis Coquillard for the land in controversy when he entered upon it, then it will be presumed, unless the presumption is rebutted by evidence, that he had and claimed the land in his own right, under that deed.

To the giving of each of said instructions the plaintiff objected at the time they were offered, but the court overruled the objection as to each of said instructions, and gave the same to the jury as the law of the case; to which opinion of the court, as to each instruction given and refused, the plaintiff objected and excepted at the time. And thereupon, after the jury had returned into court a verdict of not guilty, the plaintiff moved the court for a new trial on the ground above, that the court had admitted illegal evidence, and had misdirected the jury as to the law of the case; which motion the court overruled, and entered judgment on the verdict. To all of which opinions of the court the plaintiff excepts, and prays that this his bill of exceptions may be signed and sealed, and made a part of the record; which is done accordingly.

E. M. HUNTINGTON, [SEAL.]

The plaintiffs filed the following bond in pursuance of the order of court:

Know all men by these presents, that we, Luther Mann, jr., and are held and firmly bound unto William Wilson, a citizen of the State of Indiana, in the penal sum of five hundred dollars; to the payment whereof well and truly to be made we bind ourselves and heirs firmly by these presents. Sealed with our seals, and dated this 12th day of December, 1857.

The condition of the above obligation is such, that whereas John Doe ex dem. Curtis Mann and Dolphus B. Hannah has prosecuted a writ of error to the Supreme Court of the United States from the judgment of the circuit court of the United States for the district of Indiana, in a case therein, in which the said John Doe ex dem. of the said Curtis Mann and Dolphus B. Hannah are plaintiffs, and the said William Wilson is the defendant:

Now, should said Curtis Mann and Dolphus B. Hannah well and truly prosecute said writ of error, and pay and satisfy all costs that be adjudged against him on said writ of error in the Supreme Court of the United States, then the above obligation to be void; else to be and remain in full force.

L. MANN, JR. [SEAL.]

Approved January 13, 1858.

H. BASSETT, *Clerk.*

The above bond is approved.

JNO. B. NILES,
Att'y for Wilson.

INDIANA DISTRICT, *ss.*

I, Horace Bassett, clerk of the United States circuit court for the seventh circuit and district of Indiana, do certify the within and foregoing to be a true and correct transcript from the records now in my office in the above entitled cause, together with the writ of error, the citation, and the bond of appeal, together with the costs of this appeal, taxed at seventeen dollars and seventy-nine cents.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Indianapolis, this [SEAL.] the 13th day of January, in the year of our Lord eighteen hundred and fifty-eight.

HORACE BASSETT, *Clerk.*

Supreme Court of the United States.—December Term, A. D. 1858.

Error from the Circuit Court of the United States in the seventh judicial circuit, for the district of Indiana.

Plaintiff's Assignment of Error.

JOHN DOE EX DEM. CURTIS MANN and DOLPHUS B. HANNAH vs. WILLIAM WILSON. } Action of Ejectment.

The plaintiff in error, being the plaintiff in the court below, by his counsel and attorneys, O. H. Smith and J. A. Liston, assign the following errors, to wit:

No. 1.

The court below admitted illegal evidence to go to the jury on behalf of the defendant, against the objections and exceptions of the plaintiff, as will appear by the bill of exceptions in the record, to wit:

The Indian, Pet-chi-co, on the 8th day of February, 1833, executed a certain instrument in writing (which is set out in the bill of exceptions) to Alexis Coquillard and David H. Colerick, for his (Pet-chi-co's) interest in two sections of land, (which instrument the defendant calls a deed,) and which the court below permitted the defendant to read in evidence to the jury as a deed.

To the introduction of said Pet-chi-co's deed in evidence the plaintiff then and there objected at the time, and before the same was read to the jury, upon the following grounds, to wit:

1st. Pet-chi-co, the reservee, (i. e., the promised grantee,) had no assignable interest in the reservation (meaning the promised grant) in the treaty of 27th October, 1832, as he died before the location of the land or the issuance of the patents.

2d. The purchase from Pet-chi-co of his interest in the reservation, (meaning the promised grant,) before the land was located and the patents issued, was void in law, against the acts of Congress and public policy.

3d. The paper is void, as containing no sufficient description in law to convey and vest a legal title.

4th. At most, the paper could only convey an equity, and cannot be given in evidence in this action at law.

The court below overruled the plaintiff's objections, and permitted the defendant to read the said Pet-chi-co instrument in evidence to the jury as a deed. The opinion and ruling of the court, in admitting said instrument to be given and read in evidence by the defendant to the jury, and the overruling the said four grounds of objection by the plaintiff thereto, are now by the plaintiff assigned as error.

No. 2.

The defendant then introduced an instrument in writing (called by the defendant a deed) from David H. Colerick to Alexis Coquillard, bearing date the 24th June, 1834, purporting to assign his interest in two sections of land, to which the plaintiff objected and excepted to at the time, and before the same was read, on the same grounds of objection urged against the deed from Pet-chi-co; but the court overruled the objections, and permitted the defendant to read said paper in evidence to the jury as a deed; to which opinion of the court the plaintiff objected and excepted at the time, as will be seen by the bill of exceptions in the record.

These objections and exceptions to the rulings of the court, in admitting the said Colerick deed in evidence, are now also assigned as error.

No. 3.

The defendant then introduced an instrument in writing (called by the defendant a deed) from said Alexis Coquillard, purporting to assign his interest in two sections of land to William Wilson, the defendant, bearing date the 27th June, 1835, to which the plaintiff objected and excepted at the time, and before the same was read, on the same grounds of objection urged against the deed from Pet-chi-co; but the court overruled the objections, and permitted the defendant to read said paper in evidence to the jury as a deed; to which opinion of the court the plaintiff objected and excepted at the time, as will be seen by the bill of exceptions in the record.

These objections and exceptions to the rulings of the court, in admitting the said Coquillard deed in evidence, are now also assigned as error.

The plaintiff also makes the further assignment of error, to wit:

No. 4.

1st. The court below refused legal instructions to the jury asked by the plaintiff, as set forth in the bill of exceptions; and which instructions, as asked and refused, are as follows, to wit:

No. 5.

1st. That until the date of the patents, 7th January, 1837, the title to these lands was in the United States, and no time nor adverse possession can be set up by the defendant, commencing before that time, (i. e., the date of the patents.)

No. 6.

2d. No adverse possession can be set up for less time than twenty years, as a bar to this action, and as twenty years have not elapsed between the date of the patents and the bringing of this action there can be no adverse possession in this case.

No. 7.

3d. That Pet-chi-co held no interest under the treaty in the lands in question up to the time of his death that was assignable, he having died before the location of the land, and before the patents issued.

No. 8.

4th. That the contract between Pet-chi-co and Coquillard and Colerick, for his (Pet-chi-co's) interest in the lands, made before the land was located or the patents issued, was unauthorized and void, against public policy and the laws of the United States.

No. 9.

5th. The defendant, William Wilson, claiming under the con-

tract between Pet-chi-co and Coquillard and Colerick, that contract not being valid nor assignable, cannot be considered by the jury an assignee in the contemplation of the act of Congress or the patents, and cannot take under the patents; (i. e., Wilson, the defendant, cannot claim as an assignee in virtue of the act of Congress of the 20th May, 1836, nor under nor by virtue of the patents.)

No. 10.

6th. That neither the promise to the Indian nation by the government to patent these lands to Pet-chi-co, nor the paper executed by Pet-chi-co being made assignable by law, the same, even if valid in other particulars, is void at common law, for the want of a sufficient description of the land; and is also void in this action under the statute of frauds and perjuries. (By reference to the instrument in the record, it will appear that the Pet-chi-co deed to Coquillard and Colerick contains no description of land. Neither is there any description of the land in the two other deeds given in evidence on the trial by the defendants.)

No. 11.

7th. That the defendant prior to the issuance of the patents was a trespasser on the lands of the United States in question, and having acquired neither an equitable nor a legal title since, he has been and still is a trespasser as against the legal owners, the plaintiff, claiming under the patents.

No. 12.

8th. It being proved that Pet-chi-co, the Indian, to whom the promised grant was made of two sections of land, by the third article of the treaty held with the Pottawatomie Indians, in Indiana, on Tippecanoe river, of the 27th day of October, 1832, deceased some time in the year 1833, and which is admitted by all parties in the suit, the plaintiff asks the court to instruct the jury, that no patent for said land could have issued to any person for said land under said treaty, (meaning after the death of Pet-chi-co,) unless in virtue of the provisions of the act of Congress of the 20th May, 1836, entitled, "An act to give effect to patents for public lands issued in the names of deceased persons," and that when said patents issued for said lands, (Pet-chi-co being dead,) it (the patents meaning) inured to and vested the legal title in fee simple in the heirs of said Pet-chi-co, and not in any person or persons claiming as assignees as against the heirs, (meaning in this suit.)

No. 13.

9th. That there were three treaties of the Tippecanoe river held with Pottawatomie Indians, in Indiana, in the month of October,

A. D. 1832—the first on the 20th, the second on the 26th, and the third on the 27th day of that month and year; and that by the treaty of the 27th of that date the promised grant was made to Pet-chi-co, and that if Pet-chi-co had the right of assigning or transferring his interest to said promised grant in said treaty, and did assign his interest therein, as contended for by the defendant, by his (Pet-chi-co's) deed of the 8th day of February, 1833, to Coquillard and Colerick, before the location of the land under the direction of the President, that such assignees can claim no interest in said assignment, unless the lands were afterwards located in the territory ceded by the Indians (in the treaty) of the date of the 27th day of October aforesaid; and as the lands in controversy are not situated within the territory ceded by the said treaty of the 27th, but are situated within the territory ceded by a different band of the same tribe by the said treaty of the 26th of October aforesaid, and therefore the defendant cannot claim nor hold the land as the assignee of Pet-chi-co, nor as his assignee, under the provisions of the act of Congress of the 20th May, A. D. 1836, entitled "An act to give effect to patents for public lands issued in the names of deceased persons."

Which instructions, and each and every of them, the court then and there refused to give to the jury, on the ground that they and each of them were unwarranted by the laws of the land.

To which opinion of the court and the ruling thereof, as to each of said instructions asked, the plaintiff objected and excepted at the time, while the jury were in the box, and before they had retired from the court, in due time, as appears by the bill of exceptions. Which opinion and rulings of the court the plaintiff now assigns as error.

The plaintiff also makes the further assignment of error:

No. 14.

The court below gave to the jury, on behalf of the defendant, illegal instructions, as stated in the bill of exceptions, and which instructions are as follows, to wit:

No. 15.

1st. The descriptions of the land in the deeds from Pet-chi-co to Coquillard and Colerick, from Colerick to Coquillard, and from Coquillard to Wilson, are sufficient to identify the land thereby intended to be conveyed as the same two sections of land which are in controversy in this suit, and which are described in the patents which have been read in evidence.

No. 16.

2d. Had the patents for the two sections of land now in controversy been issued to the Indian, Pet-chi-co, in pursuance of the

treaty by which the United States agreed to grant to him those two sections, and the legal title been thereby fully vested in him at the date of his deed to Coquillard and Colerick, which has been given in evidence, then that deed would have been sufficient on its face to convey to them the legal title to the land immediately on its execution and delivery.

No. 17.

3d. The heirs of Pet-chi-co, through whom the lessors of the plaintiff claim title, and the lessors of the plaintiff themselves, as vendees of said heirs, are estopped by the covenants in Pet-chi-co's deed to Coquillard and Colerick from denying that Pet-chi-co had the legal title to the land in controversy at the date of that conveyance.

No. 18.

4th. If Pet-chi-co, between the ratification of the treaty and the issuing of the patents, sold and conveyed the land in controversy by a sufficient deed of conveyance, with covenants of warranty to Coquillard and Colerick, and their assigns, then the patents when issued, as to the assignees, related back to and took effect from the ratification of the treaty.

No. 19.

5th. If, before the issuing of the patents to Pet-chi-co, he had, by a legal and valid instrument, assigned to Coquillard and Colerick his interest in the lands which were to be granted to him under the treaty of October, 1832, and if Colerick had in like manner assigned his interest to Coquillard, and if Coquillard had in like manner assigned his interest to Wilson, then by virtue of the act of Congress of May 20, 1836, the patents when issued inured to the benefit of Wilson, and vested the legal title to the land in him, although Pet-chi-co may have died before its date, (meaning the date of the patent.)

No. 20.

6th. The mere fact that Pet-chi-co was *was* an Indian does not of itself in the least degree invalidate the conveyance which was executed by him to Coquillard and Colerick.

No. 21.

7th. If the jury believe from the evidence that the defendant was in the notorious undisputed possession of the land in controversy, holding it under the deed from Coquillard, and claiming it as his own at the time when the conveyances under which the lessors of the plaintiff claim title were executed, then the latter conveyances are void as against Wilson, and the jury must find for the defendant.

No. 22.

8th. If Wilson, the defendant, held a deed from Alexis Coquillard for the land in controversy when he entered upon it, then it will be presumed, unless the presumption is rebutted by evidence, that he had and claimed the land in his own right under that deed.

To the giving of each of these instructions to the jury the plaintiff excepted, as will appear by the bill of exceptions.

Which opinion and rulings of the court, in giving said instructions, the plaintiff now also assigns as error.

The plaintiff also makes the further assignment of error, to wit:

After the jury had returned a verdict of not guilty for the defendant, the plaintiff moved for a new trial, on the following grounds, to wit:

No. 23.

1st. The court refused legal instructions to the jury, asked by the plaintiff, as set forth in the bill of exceptions.

No. 24.

2d. The court gave to the jury on behalf of the defendant illegal instructions, as stated in the bill of exceptions.

No. 25.

3d. The court admitted illegal evidence to go to the jury on behalf of the defendant, as appears by the bill of exceptions.

No. 26.

Which motion for a new trial was overruled by the court below, as will appear by the bill of exceptions. The overruling of said motion for a new trial by the court below the plaintiff now also assigns as error.

Wherefore the plaintiff prays judgment, that the judgment of the court below may be reversed, and the cause remanded for a new trial.

O. H. SMITH, and
J. A. LISTON,
Att'ys for Plaintiff in Error.

Filed 28 December, 1858.

treaty by which the United States agreed to grant to him those two sections, and the legal title been thereby fully vested in him at the date of his deed to Coquillard and Colerick, which has been given in evidence, then that deed would have been sufficient on its face to convey to them the legal title to the land immediately on its execution and delivery.

No. 17.

3d. The heirs of Pet-chi-co, through whom the lessors of the plaintiff claim title, and the lessors of the plaintiff themselves, as vendees of said heirs, are estopped by the covenants in Pet-chi-co's deed to Coquillard and Colerick from denying that Pet-chi-co had the legal title to the land in controversy at the date of that conveyance.

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4th. If Pet-chi-co, between the ratification of the treaty and the issuing of the patents, sold and conveyed the land in controversy by a sufficient deed of conveyance, with covenants of warranty to Coquillard and Colerick, and their assigns, then the patents when issued, as to the assignees, related back to and took effect from the ratification of the treaty.

No. 19.

5th. If, before the issuing of the patents to Pet-chi-co, he had, by a legal and valid instrument, assigned to Coquillard and Colerick his interest in the lands which were to be granted to him under the treaty of October, 1832, and if Colerick had in like manner assigned his interest to Coquillard, and if Coquillard had in like manner assigned his interest to Wilson, then by virtue of the act of Congress of May 20, 1836, the patents when issued inured to the benefit of Wilson, and vested the legal title to the land in him, although Pet-chi-co may have died before its date, (meaning the date of the patent.)

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7th. If the jury believe from the evidence that the defendant was in the notorious undisputed possession of the land in controversy, holding it under the deed from Coquillard, and claiming it as his own at the time when the conveyances under which the lessors of the plaintiff claim title were executed, then the latter conveyances are void as against Wilson, and the jury must find for the defendant.

No. 22.

8th. If Wilson, the defendant, held a deed from Alexis Coquillard for the land in controversy when he entered upon it, then it will be presumed, unless the presumption is rebutted by evidence, that he had and claimed the land in his own right under that deed.

To the giving of each of these instructions to the jury the plaintiff excepted, as will appear by the bill of exceptions.

Which opinion and rulings of the court, in giving said instructions, the plaintiff now also assigns as error.

The plaintiff also makes the further assignment of error, to wit:

After the jury had returned a verdict of not guilty for the defendant, the plaintiff moved for a new trial, on the following grounds, to wit:

No. 23.

1st. The court refused legal instructions to the jury, asked by the plaintiff, as set forth in the bill of exceptions.

No. 24.

2d. The court gave to the jury on behalf of the defendant illegal instructions, as stated in the bill of exceptions.

No. 25.

3d. The court admitted illegal evidence to go to the jury on behalf of the defendant, as appears by the bill of exceptions.

No. 26.

Which motion for a new trial was overruled by the court below, as will appear by the bill of exceptions. The overruling of said motion for a new trial by the court below the plaintiff now also assigns as error.

Wherefore the plaintiff prays judgment, that the judgment of the court below may be reversed, and the cause remanded for a new trial.

O. H. SMITH, and
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Att'ys for Plaintiff in Error.

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